IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 7196 of 2007(F)

AGAINST THE ORDER IN IA 1618 2006 IN
OS.118/2003 of MUNSIFF COURT, CHANGANACHERRY

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PETITIONER:

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1. RAJENDRA PRASAD, KUNNUMPURATHU HOUSE,
VAZHAPPALLY EAST KARA, CHANGANASSERY.

2. ASHA, DO. DO.

BY ADV. SRI.G.UNNIKRISHNON

RESPONDENTS:

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1. HEMALATHA, VENU NIVAS,
KOMANA MURI, AMBALAPUZHA.

2. KAMALAMMAL, KUNNUMPURATHU HOUSE,
VAZHAPPALLY EAST KARA, CHANGANASSERY.

3. GEETHAMANI, SREERANGAM HOUSE,
CHERTHALA EAST MURI, KOKKOTHAMANGALAM,
CHERTHALA.

4. DHANALAKSHMI, SIVASADANAM,
KODAMTHURUTHY, CHERTHALA.

5. GIRIJAMANI, RAMESH BHAVAN,
THODUPUZHA EAST, KANJIRAMATTOM VILLAGE.

R4 BY ADV. SRI.M.P.MADHAVANKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF PLAINT IN O.S.52/02, MUNSIFF'S COURT, CHANGANACHERRY

EXT.P2: -DO- OF PLAINT IN O.S.118/03, MUNSIFF'S COURT, CHANGANACHERRY

EXT.P3: -DO- OF COUNTER CLAIM IN O.S.118/03, MUNSIFF;S COURT, CHANGANACHERRY

EXT.P4: -DO- OF I.A.1618/06 IN O.S.118/03 MUNSIFF'S COURT, CHANGANACHERRY

EXT.P5: -DO- OF ORDER DT.4.11.06 IN I.A.1618/06

EXT.P6: -DO- OF WRITTEN STATEMENT FILED BY PETITIONERS IN O.S.118/03 MUNSIFF'S COURT, CHANGANACHERRY

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.7196 OF 2007 F

Dated this the 28th June, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order in I.A.1618/06 in O.S.118/03. The said application has been filed by the defendants in the suit to stay O.S.118/03 till the disposal of A.S.3/06 pending before the District Court, Kottayam under Section 10 of the Civil Procedure Code. The brief facts necessary for the disposal of the writ petition are as follows. The present defendants had instituted a suit to set aside the documents 2280 to 2282/01 with respect to 10 3/4 cents, 5 1/2 cents and 7 cents respectively. Those documents were executed by Velayudhan Achary in favour of respondents 1 to 3. It is contended that the said document is vitiated by fraud, undue influence etc. The suit O.S.52/02 was dismissed by the Munsiff Court and an appeal is pending before the District Court, Kottayam as A.S.3/06. O.S.118/03 is filed for a mandatory injunction. The facts are that the said Velayudhan Achary executed a document in favour of his wife who in turn had assigned it in favour of first respondent in the I.A. and she had moved the suit for the relief of mandatory injunction. There also the defence is that the said document 2283/01 is vitiated by fraud. It is true

that the challenge in all these documents are on the ground of fraud, coercion, undue influence etc. But a finding regarding the same in O.S.52/02 cannot be applied as a straight jacket formula in O.S.118/03 and either suit or non-suit the plaintiff therein. It requires independent consideration and it is a settled position that fraud etc. cannot be inferred from conjectures and surmises and it depends upon the facts of each and every case. So even if A.S.3/06 is decided in favour of the present petitioners that finding cannot be used to dispose of O.S.118/03 pending before the Changanacherry Court. Therefore the question Section 10 CPC does not arise and therefore the learned Munsiff has applied the mind properly and disposed of the I.A in accordance with law. Therefore, the writ petition stands dismissed.

M.N.KRISHNAN
Judge

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